

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|-----------------------------|---|---------------------|
| JOINT APPLICATION OF DUKE |) | |
| ENERGY CORPORATION, DUKE |) | |
| ENERGY HOLDING CORP., DEER |) | |
| ACQUISITION CORP., COUGAR |) | |
| ACQUISITION CORP., CINERGY |) | CASE NO. 2005-00228 |
| CORP., THE CINCINNATI GAS & |) | |
| ELECTRIC COMPANY AND THE |) | |
| UNION LIGHT, HEAT AND POWER |) | |
| COMPANY FOR APPROVAL OF A |) | |
| TRANSFER AND ACQUISITION |) | |
| OF CONTROL |) | |

O R D E R

On August 1, 2005, Duke Energy Corporation ("Duke Energy"), Duke Energy Holding Corp. ("DE Holding"), Deer Acquisition Corp. ("DAC"), Cougar Acquisition Corp. ("CAC"), Cinergy Corp. ("Cinergy"), The Cincinnati Gas & Electric Company ("CG&E"), and The Union Light, Heat and Power Company ("ULH&P") (collectively, "Joint Applicants") filed a joint application, pursuant to KRS 278.020(5) and 278.020(6), for approval of the acquisition and transfer of control of ULH&P.

The joint application included the direct prepared testimony of ten witnesses and a proposed procedural schedule based on a 120-day review. On August 9, 2005, the Commission issued an Order finding good cause to adopt the 120-day review period as permitted by KRS 278.020(6), and established a procedural schedule that provided for two rounds of discovery, an opportunity for intervenor testimony, a public hearing, and

post-hearing briefs. The Commission granted full intervention to the Attorney General's Office of Rate Intervention ("AG") and the Kroger Co. ("Kroger").

The Joint Applicants responded to extensive requests for information, and the AG filed direct and supplemental direct testimony. At the request of the Joint Applicants, informal conferences were held at the Commission's offices on October 10 and 12, 2005.

Merging Parties

ULH&P is a Kentucky corporation engaged in the transportation and distribution of natural gas and the transmission and distribution of electricity in northern Kentucky. ULH&P has approximately 145,000 retail gas and electric customers and it is a utility as defined under KRS 278.010(3). ULH&P is a wholly owned subsidiary of CG&E, an Ohio utility that provides gas and electric service in the Cincinnati metropolitan area. CG&E is a wholly owned subsidiary of Cinergy, a registered holding company under the Public Utility Holding Company Act of 1935 ("PUHCA35"). Cinergy was created in 1994 upon the merger of CG&E and PSI Energy, Inc., an electric utility serving central and southeastern Indiana.

Duke Energy is a diversified energy company headquartered in Charlotte, North Carolina. Duke Energy operates numerous divisions, some regulated and some unregulated, engaged in natural gas, electric, and real estate businesses. One division, Duke Power, is one of the largest investor-owned utilities providing electric service to 2.2 million customers in central and western North Carolina and western South Carolina. Duke Power owns a diversified generation portfolio exceeding 18,000

megawatts of coal-fired, nuclear, hydro-electric, and combustion turbine generating stations, as well as a 13,000-mile electric transmission system.

Another division, Duke Energy Gas Transmission, owns more than 17,500 miles of transmission pipeline and gas storage facilities. This division also provides natural gas distribution service to approximately 1.2 million retail customers in Ontario, Canada. Duke Energy also operates a merchant electric business through a division known as Duke Energy North America. Other divisions of Duke Energy are engaged in the production of natural gas liquids, the development of real estate projects, and fiber optic communication systems.

Overview of the Transaction

By an Agreement and Plan of Merger ("Merger Agreement") dated May 8, 2005, Cinergy and Duke Energy will merge and they will both become wholly owned subsidiaries of a new holding company now known as DE Holding. Post-merger, the name of DE Holding will be changed to Duke Energy Corporation ("New Duke Energy") and the only significant assets that it will own will be the stock of its subsidiaries. The corporation that is currently known as Duke Energy will be renamed Duke Power Company, LLC.

As part of the Merger Agreement, each shareholder of the current Duke Energy will receive one share of common stock in the new holding company for each share owned, while each shareholder of Cinergy will receive 1.56 shares of common stock in the new holding company for each share owned. Based on the number of common shares outstanding as of the date of the Merger Agreement, on consummation of the merger, the current Duke Energy shareholders will own approximately 76 percent of the

common stock of New Duke Energy, and the current Cinergy shareholders will own approximately 24 percent.

Post-merger, ULH&P will continue as a wholly owned subsidiary of CG&E, while CG&E and PSI Energy, Inc. will continue as wholly owned subsidiaries of Cinergy. A number of the senior level management positions in this current corporate structure will be consolidated with similar positions within the Duke Energy structure. As a result of the recently enacted 2005 Energy Policy Act, PUHCA35 has been repealed, thereby eliminating the long-standing requirement that a registered holding company create a subsidiary service company to provide services at cost to the operating utility. However, the Joint Applicants have stated that they intend to continue utilizing a service company which will provide services to the utility subsidiaries of Cinergy and to Duke Power.

Statutory Standard for Merger

Under KRS 278.020(5), no person may acquire or transfer control of a utility until the Commission has determined that the acquirer has the financial, technical, and managerial abilities to provide reasonable service. In addition, under KRS 278.020(6), no individual may acquire control of a utility unless the Commission has determined that the acquisition is made in accordance with the law, for a proper purpose, and is consistent with the public interest.

Merger Savings

The merger is projected to produce the potential for total gross savings of \$2.1 billion across the combined regulated and non-regulated businesses over the first 5 years following the merger. After deducting the projected costs-to-achieve, the potential total net savings for the first 5 years should be \$1.34 billion. For just the

regulated businesses, the potential gross savings over that same period is approximately \$1.3 billion, with net savings of approximately \$807 million. Although the Joint Applicants will also have approximately \$183 million in change-in-control costs, none of those costs have been included in their analyses of net regulated savings and none of those costs will be used to reduce the gross amount of regulated savings.

Agreed Stipulation

On October 18, 2005, the parties filed an Agreed Stipulation setting forth their agreement and stipulation regarding all outstanding issues, including the following:

1. The amount of net savings to be credited to ULH&P's ratepayers;
2. The implementation of a tariff to credit ULH&P's electric ratepayers with certain profits from off-system electric sales;
3. The adoption of a Most Favored Nations Clause regarding the sharing of merger benefits with retail customers;
4. The adoption by the Joint Applicants of 46 merger commitments; and
5. The approval of the merger of Duke Energy and Cinergy and the subsequent corporate reorganization of Duke Energy.

The Agreed Stipulation is attached to this Order as Appendix A.

At the public hearing on October 20, 2005, the Joint Applicants, the AG, and Kroger affirmed their satisfaction that the Agreed Stipulation was entered into as a result of good faith negotiations and was the result of full and complete disclosure by the parties with respect to all relevant issues.¹

¹ Transcript of Evidence ("T.E."), October 20, 2005, at 54-55.

Commission Findings

Based on the evidence of record, and in particular the Agreed Stipulation, which includes 46 merger commitments made by the Joint Applicants, the Commission finds that the Agreed Stipulation represents a reasonable resolution to the issues surrounding the proposed merger and should be approved. The Agreed Stipulation allows for a fair and equitable distribution of the merger benefits between ratepayers and shareholders and protects ULH&P's ratepayers from many of the potential risks posed by the merger. While the Commission finds that the Agreed Stipulation should be approved, we will take this opportunity to emphasize several of its provisions.

Regulatory Accounting

Attachment 2 of the Agreed Stipulation contains the 46 merger commitments made by the Joint Applicants. Commitment Nos. 3, 4, and 5 deal with the retail rate-making and accounting treatments for the payment of Cinergy's stock, any acquisition premium paid by Duke Energy for the Cinergy stock, and change in control payments. The Joint Applicants have committed that these expenses will be excluded from the books of ULH&P for rate-making purposes. They will also be excluded for accounting purposes, unless the accounting treatment is inconsistent with Securities and Exchange Commission ("SEC") principles. The accounting issue that arises from this merger is the recording of goodwill on the books of the holding company and the recording of a portion of those expenses on the books of the subsidiary companies, which is referred to as "push down" accounting. ULH&P has stated that it has no desire to record these

expenses on its books for regulatory accounting purposes, but may be required to do so to comply with SEC reporting purposes.²

In previous merger cases, the Commission has expressed its concern and strong opposition to “push down” accounting, due to the potential adverse financial impact on the regulated utility and its ratepayers.³ The Commission believes that the interpretations contained in SEC Staff Accounting Bulletin No. 54 and the amount of ULH&P’s publicly held debt support a conclusion that “push down” accounting should not be required.⁴

However, the Commission is also aware of the financial reporting responsibilities ULH&P and the Joint Applicants have to the SEC. While we are approving the Agreed Stipulation and accepting the merger commitments, the Commission urges ULH&P and the Joint Applicants to seek accounting interpretations that do not require “push down” accounting. If the conclusion is reached that, in order to be consistent with SEC principles, ULH&P must record these expenses on its books for accounting purposes, ULH&P should notify the Commission in writing within 30 days of reaching that conclusion.

² T.E., October 20, 2005, at 51-52.

³ See Case No. 2001-00104, Joint Application for Transfer of Louisville Gas and Electric Company and Kentucky Utilities Company in Accordance with E.ON AG’s Planned Acquisition of PowerGen PLC, final Order dated August 6, 2001, at 16-17.

⁴ Response to the Commission Staff’s First Data Request dated August 16, 2005, Item 36.

Affiliated Company Agreements

The Joint Application and the Agreed Stipulation include the request that the Commission approve five agreements between ULH&P and its affiliated companies.

The five agreements are:

1. Service Company Utility Service Agreement;
2. Operating Company / Non-utility Companies Services Agreement;
3. Operating Companies Services Agreement;
4. Regulated Money Pool Agreement; and
5. Tax Sharing Agreement.

The five agreements cover a variety of transactions that could exist between ULH&P and any of the affiliates and subsidiaries of New Duke Energy. The first three agreements also provide the cost allocation methods to be followed for transactions. Merger Commitment No. 12 provides that the Commission will receive 30 days' advance notice of any changes in the cost allocation methods set forth in these agreements.

The Commission finds that the five agreements as presented in this case should be approved. The agreements provide clear direction on how affiliated transactions will be handled in the New Duke Energy corporate structure. The Commission recognizes that during the approval process of a merger on the scale of Duke Energy and Cinergy, events may cause changes in documents and agreements that were thought to be final. Therefore, in the event that any of the five listed agreements are modified or withdrawn prior to the consummation of the proposed merger, the Joint Applicants should notify the Commission in writing of any modification or withdrawal. The notification should be filed no later than 20 days after the finalization of a modification or withdrawal, and

should contain a narrative explanation of the modification or the reasons for the withdrawal of the agreement.

Financial Issues

The Commission notes that several of the 46 merger commitments contained in the Agreed Stipulation address financial issues between ULH&P and the affiliates of New Duke Energy, including the following:

1. ULH&P shall not incur any additional indebtedness, issue any securities, or pledge any assets to finance any part of Duke Energy's acquisition of Cinergy's stock;
2. ULH&P will pay dividends only out of retained earnings and that ULH&P's capital structure will contain a minimum of 35 percent equity;
3. ULH&P must receive Commission approval before it can issue long-term debt and ULH&P will not guarantee the credit of any of its affiliates unless specifically approved by the Commission;
4. All debt at the New Duke Energy and Cinergy levels will be non-recourse to ULH&P; and
5. ULH&P will loan and borrow money from affiliates only under the terms of the Regulated Money Pool Agreement and only with the parties to that agreement, but no loans will be made to Cinergy or New Duke Energy.

The Commission believes the commitments on financial issues should help protect ULH&P and its ratepayers from the risks associated with the proposed merger.

Commitments from the 1994 Cinergy Merger

In conjunction with the Commission's approval in 1994 of Cinergy's indirect acquisition of control of ULH&P, numerous regulatory concerns were addressed in commitments made by the applicants in that case. The Joint Applicants were asked if they were willing to adopt in this case all of the commitments established in the 1994 merger case. The response by the Joint Applicants was a preference for having one list

of all the merger commitments contained in one case, rather than having the merger commitments split between two cases.⁵ Based on a review of the commitments from the 1994 case and those offered here, the Commission finds that all of the issues and concerns addressed in the 1994 commitments have been addressed by the commitments made in this proceeding. Consequently, upon the consummation of the proposed merger of Duke Energy and Cinergy, the commitments contained in the Agreed Stipulation will supersede the commitments contained in the 1994 case and the 1994 commitments will no longer be applicable.

Reports

As part of the Energy Policy Act of 2005, the Federal Energy Regulatory Commission ("FERC") has initiated a proposed rule-making proceeding to address changes related to the repeal of PUHCA35. FERC has proposed to continue requiring the filing of two SEC reports, Form U5S and Form U-13-60. Merger Commitment No. 36 requires ULH&P and Duke Energy to file copies of these reports with the Commission. The commitment also notes that if the FERC decides to not establish a requirement for these two SEC reports, ULH&P will meet with the Commission to discuss and reach agreement on alternative reporting to meet the Commission's reasonable data needs. In the event that FERC declines to require either or both of these SEC reports, ULH&P should file a written request for an informal conference within 30 days of the FERC decision.

⁵ Response to the Commission Staff's Second Data Request dated September 8, 2005, Item 22(a).

Summary of Findings

The Commission, after consideration of the evidence of record, finds that:

1. Duke Energy, DE Holding, DAC, and CAC have the financial, technical, and managerial abilities to provide reasonable utility service upon their acquisition of ownership and control of ULH&P.

2. While ULH&P is and will continue to be a utility as defined in KRS 278.010(3), none of the other Joint Applicants and no intermediate company between ULH&P and Duke Energy or DE Holding will, by reason of direct or indirect ownership of ULH&P, be a utility as defined in KRS 278.010(3).

3. The proposed merger of Duke Energy and Cinergy and the resulting indirect change in control of ULH&P is in accordance with law; for a proper purpose; and, subject to the provisions of the Agreed Stipulation, will be consistent with the public interest.

4. The Agreed Stipulation, appended hereto as Appendix A, is reasonable, does not conflict with any regulatory principle, and should be approved.

5. The corporate reorganization of DE Holding and the conversion of Duke Energy to a limited liability company known as Duke Power Company, LLC, as described in the joint application, should be approved.

6. The affiliated company agreements, identified and provided in the application, should be approved as submitted, subject to the findings herein regarding any modification or withdrawal of the agreements.

7. ULH&P's request for a deviation under KRS 278.2207(2) for the pricing terms of the affiliated company agreements is reasonable, in the public interest, and should be approved.

8. ULH&P's request for authority to modify its accounting procedures in order to defer transaction costs and costs incurred in order to realize cost savings as a result of the merger transaction, as described in the Joint Application, should be approved.

9. The Joint Applicants should file, within 10 days of receipt, copies of final merger approvals received from the FERC, the Nuclear Regulatory Commission, the Federal Communications Commission, and all state regulatory commissions to the extent that these documents have not already been filed. With each filing of an approval of a state regulatory commission, the Joint Applicants should explain whether the Most Favored Nations Clause set forth in Article III of the Agreed Stipulation requires any changes to the merger savings rate credits approved herein.

IT IS THEREFORE ORDERED that:

1. The terms and conditions set forth in the Agreed Stipulation, appended hereto as Appendix A, are adopted and approved and are incorporated into this Order as if fully set forth herein.

2. The Joint Applicants shall individually and collectively be bound by and comply with each of the provisions and commitments set forth in the Agreed Stipulation.

3. The proposed merger transaction of Cinergy and Duke Energy and the resulting indirect transfer of control of ULH&P are approved.

4. The proposed merger savings rate credits and off-system sales sharing mechanism are approved, subject to the terms of the Most Favored Nations Clause set forth in Article III of the Agreed Stipulation.

5. Within 30 days of the date of this Order, ULH&P shall file tariff sheets reflecting the approved merger savings rate credits and off-system sales sharing mechanism.

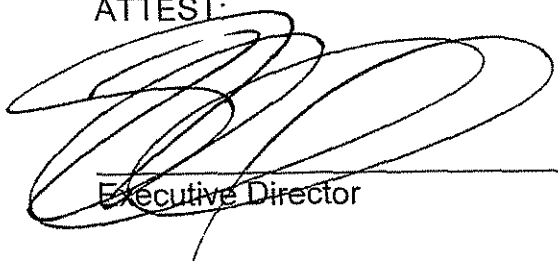
6. Within 5 days of the consummation of the proposed merger, the Joint Applicants shall file a written notice setting forth the date of the merger and the effective dates of the merger savings rate credits tariff and the off-system sales sharing mechanism tariff.

7. The Joint Applicants, or ULH&P where designated herein, shall comply with all reporting, notice, and filing requirements as specifically described in the findings above.

Done at Frankfort, Kentucky, this 29th day of November, 2005.

By the Commission

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2005-00228 DATED NOVEMBER 29, 2005

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

OCT 18 2005

JOINT APPLICATION OF DUKE)
 ENERGY CORPORATION, DUKE)
 ENERGY HOLDING CORP., DEER)
 ACQUISITION CORP., COUGAR)
 ACQUISITION CORP., CINERGY)
 CORP., THE CINCINNATI GAS &)
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 COMPANY FOR APPROVAL OF A)
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 OF CONTROL)

PUBLIC SERVICE
COMMISSION

CASE NO. 2005-00228

 AGREED STIPULATION

The undersigned parties ("Parties"), by counsel, hereby advise the Kentucky Public Service Commission ("Commission" or "KPSC") that the Parties have agreed by written stipulation ("Stipulation") as follows:

WHEREAS, on August 1, 2005, Duke Energy Corporation, Duke Energy Holding Corp. ("Holding"), Deer Acquisition Corp. ("DAC"), Cougar Acquisition Corp. ("CAC"), Cinergy Corp. ("Cinergy"), The Cincinnati Gas & Electric Company ("CG&E") and The Union Light, Heat And Power Company ("ULH&P") (collectively, "Applicants") filed an application pursuant to KRS 278.020(5) and (6) and 807 KAR 5:001 Section 8 and supporting testimony, seeking approval of a transfer and acquisition of control of ULH&P; and

WHEREAS, Gregory D. Stumbo, Attorney General for the Commonwealth of Kentucky, and The Kroger Co. filed motions to intervene, which the Commission granted; and

WHEREAS, the Attorney General filed testimony and supplemental testimony in support of his position; and

WHEREAS, the Parties recognize that continued litigation of this proceeding could be lengthy and costly, and the Parties desire to settle the issues arising in this proceeding;

NOW THEREFORE, the Parties hereby agree, stipulate and recommend to the Commission that it issue an Order approving Applicants' application submitted to the Commission on August 1, 2005 for approval of a transfer and acquisition of control of ULH&P, subject to the following terms and conditions:

I. MERGER SAVINGS AND MERGER COSTS

A. The Parties have both presented testimony pertaining to the calculation of the amount of merger savings and costs. It is understood by all signatories hereto that this Settlement agreement is subject to the approval of the Commission and does not represent the Parties' agreement on any specific theory supporting the appropriateness of any proposed or recommended adjustments to ULH&P's rates. Nevertheless, having reached accord on an amount the Parties are agreed would reflect what the Parties could expect were the case to be fully litigated, the Parties agree that the amount of the merger credit to ULH&P's ratepayers shall total \$7,634,100 to be paid as provided below.

B. Starting with the first billing cycle which begins 30 days but not more than 60 days following closing of the Duke / Cinergy merger, ULH&P will reduce its base rates

by providing gas and electric rate credits. The rate credits will total \$7,634,100 over the five-year period following merger closing, and will be credited on a levelized basis as shown on Attachment 1 and will be allocated to customer classes based on operation and maintenance expense as discussed in Applicants' testimony. Upon the effective date of new rates in ULH&P's next gas and electric base rate cases (not including any electric or gas base rate case which results in rates effective prior to January 1, 2008), the gas or electric rate credit applicable to that service will expire.

C. Merger savings related to electric fuel costs will be flowed to customers, as actually achieved, beginning with the reactivation of a fuel cost recovery mechanism for ULH&P pursuant to the Commission's December 5, 2003 Order in Case No. 2003-00252, and following merger closing. Merger savings related to gas costs will be flowed to customers following merger closing, as actually achieved, through the purchased gas adjustment clause.

D. The Commission's approval of this Stipulation, if granted, shall be deemed to grant ULH&P accounting authority to establish the necessary accounting deferrals to defer merger costs (as shown in Attachment 1) over the same time period during which ULH&P provides rate credits to customers. Such deferred costs will be recovered as provided herein and amortized off of ULH&P's books on a levelized basis over five years, and will not ever be otherwise eligible for recovery through rates. If ULH&P files a new gas or electric base rate case within five years following merger closing, the Company's amortization of such costs for that particular service shall cease upon the effective date for such new rates, and ULH&P will not seek to recover such unamortized costs as part of such new base rates. None of the provisions of this paragraph shall apply

to any electric or gas base rate case which results in rates effective prior to January 1, 2008.

II. ACTIVATION OF SHARING MECHANISM FOR OFF-SYSTEM SALES PROFITS

A. Upon merger closing, ULH&P shall activate the mechanism for sharing profits for ULH&P's off-system sales approved in the Commission's December 5, 2003 Order in Case No. 2003-00252. Under this sharing mechanism and for calendar year 2006 only, the off-system sales profits shall be shared and allocated as follows: the first \$1.45 million in off-system sales profits shall be allocated to customers; the next \$400,000 of off-system sales profits shall be allocated to ULH&P; and any additional off-system sales profits shall be allocated 50 / 50% between ULH&P and customers. In no event shall the amount of the off-system sales profits allocated to customers be less than \$1.45 million for 2006.

B. If the merger fails to close in 2006 in time to allow customers to receive the benefit established in the preceding paragraph, the off-system sharing mechanism shall be adjusted so that when it is activated, it will afford the benefits set out in the preceding paragraph in addition to any benefits that would accrue to customers in the year it is activated.

C. The off-system sales profits applicable to customers under paragraph II(A) hereof shall be allocated to customer class based on the proportion of operation and maintenance expense in the cost of service study (excluding fuel and purchased power) approved in ULH&P's most recent electric base rate case. ULH&P will calculate such off-system sales profits beginning January 1, 2006 through December 31, 2006, and will credit customers for such profits beginning with the first billing cycle which begins 30

days or more following merger closing. ULH&P will project and credit customers for profits for December 2006, and ~~will~~ perform a true-up for such amounts in January 2007. Beginning January 1, 2007, the sharing terms of the sharing mechanism shall revert to the terms approved in the Commission's December 5, 2003 Order in Case No. 2003-00252.

III. MOST FAVORED NATION CLAUSE

A. Following approval of the Merger by the state commissions of North ~~Carolina~~, South Carolina, Ohio, and approval of the affiliate agreements filed with the Indiana Utility Regulatory Commission in connection with the Merger, any sharing mechanisms pursuant to which merger savings are shared with retail customers in each of these states will be reviewed to identify the utility whose retail customers will receive the largest percentage of the net merger savings to be achieved over the first five years after closing of the merger allocated to that utility. If the application of that percentage to the net savings allocable to Kentucky retail customers would result in a greater savings sharing than that which has been allocated to Kentucky retail customers, then the rate credits described above for Kentucky retail customers will be increased to match the application of that percentage to the net savings allocable to Kentucky retail customers. Application of this methodology is intended to ensure that Kentucky retail customers receive the benefit of a "most favored nation" status with regard to the sharing of net merger savings. In no event will the application of the methodology cause Kentucky retail customers' share of net merger savings to be reduced.

IV. MERGER COMMITMENTS

A. Applicants agree to follow the merger commitments set forth in Attachment 2 to this Stipulation.

V. OTHER TERMS AND CONDITIONS

A. The Parties stipulate that the testimony filed by the Parties in this proceeding shall be deemed admitted into evidence and may be relied upon by the Commission in rendering any orders in this proceeding.

B. The Parties will endeavor to obtain prompt approval of this Stipulation by the Commission. The Parties do not intend to modify the relief sought in the application or the testimony relied upon in support of the application, and this Stipulation shall not be deemed to be a new application. The Parties further request that the Commission issue its Order on this Stipulation by November 29, 2005, pursuant to the 120-day time limit in KRS 278.020(6).

C. This Stipulation is supported by adequate data and information; represents a just and reasonable resolution of the issues raised in these proceedings; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable Parties in a cooperative process, encouraged by this Commission and undertaken by the Parties representing a wide range of interests, including the Commission's Staff, to resolve the aforementioned issues. While this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission.

D. Except for dispute resolution purposes, neither this Stipulation, nor the information and data contained therein or attached, shall be cited as precedent in any future proceeding for or against any Party, or the Commission itself. This Stipulation is a reasonable compromise involving a balancing of competing positions, and it does not

necessarily reflect the position which one or more of the Parties would have taken if these issues had been fully litigated.

E. This Stipulation is expressly conditioned upon closing of the merger between Duke Energy Corporation and Cinergy Corp., except merger commitment no. 44, which will apply regardless whether the merger is closed. ~~This~~ Stipulation is also expressly conditioned upon adoption of the Stipulation by the Commission, in its entirety and without modification. Should the Commission reject or modify all or any part of this Stipulation or impose additional or different conditions or requirements upon the Parties, any Party shall have the right, within 10 days of service of the Commission's order, to file notice that the Party is withdrawing from the Stipulation and the Stipulation will terminate upon the filing of such notice. Upon such notice of termination or withdrawal by any Party pursuant to the above provisions, the Stipulation shall immediately become null and void.

F. All of the Signatory Parties fully support this Stipulation and urge the Commission to accept and approve the terms hereof.

G. Based on the Parties' agreement, the Parties respectfully request the Commission to take the following actions:

1. APPROVE the merger between Duke Energy and Cinergy pursuant to KRS 278.020 on the basis that Duke Energy, Holding, DAC and CAC have the financial, technical and managerial abilities to provide reasonable service, and that the proposed merger is in accordance with law, for a proper purpose and is consistent with the public interest;

2. APPROVE the corporate reorganization of Holding described in the application, to take place following the merger, in which Holding will be renamed

Duke Energy Corporation and the entity presently known by the same name will be converted to a North Carolina limited liability company called Duke Power Company LLC;

3. ORDER that neither Duke Energy, Holding, DAC, CAC, Cinergy, CG&E nor any intermediate company between ULH&P and Duke Energy or Holding **will**, by reason of direct or indirect ownership of stock of ULH&P, be a utility in Kentucky as defined in KRS 278.010(3), as they **will** not own, operate or manage any facilities used in connection with the generation, production, transmission and distribution of electricity to or for the public for compensation, and will not own, operate or manage any facility used in connection with the production, manufacture, storage, distribution, sale or furnishing of natural or manufactured gas to or for the public for compensation for light, heat, power or other uses;

4. INFORM the Federal Energy Regulatory Commission that this Commission has approved the merger between **Duke Energy** and Cinergy;

5. APPROVE, subject to the Parties' continuing **right** to argue in any rate proceeding that the allocations established by these agreements are to be treated differently on a going-forward basis, the following agreements, as filed in this proceeding, made by and among ULH&P and its affiliates: (1) Service Company Utility Service Agreement; (2) Operating Company / Non-utility Companies Services Agreement; (3) Operating Companies Services Agreement; (4) Money Pool Agreement; and (5) Tax Sharing Agreement;

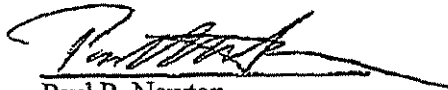
6. GRANT ULH&P a deviation under KRS 278.2207(2) for the pricing terms of the affiliate agreements, on the grounds that the requested pricing is reasonable and in the public interest; and,

7. APPROVE ULH&P's application for authority to modify current accounting procedures in order to defer transaction costs and costs incurred in order to realize cost savings as a result of the merger transaction.

HAVE SEEN AND AGREED:

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THE CINCINNATI GAS & ELECTRIC
COMPANY, AND THE UNION LIGHT,
HEAT AND POWER COMPANY

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The Union Light Heat and Power Company
Case Number 2005-00228

Sharing of Merger Savings
(\$ 000's)
(Gas Service)

| Line No. | Year 1 (A) | Year 2 (B) | Year 3 (C) | Year 4 (D) | Year 5 (E) | Five Year Total (F) | Annual Avg. (G) |
|----------|--|---------------|---------------|---------------|---------------|---------------------------|-----------------------|
| 1 | Estimated Savings | | | | | | |
| | \$ 830.8 | \$ 1,146.5 | \$ 1,344.8 | \$ 1,479.5 | \$ 1,610.6 | \$ 6,412.2 | \$ 1,282.4 |
| 2 | Estimated Costs | | | | | | |
| | \$ 1,555.6 | \$ 989.1 | \$ 877.8 | \$ 407.8 | \$ 407.8 | \$ 4,238.1 | \$ 847.6 |
| 3 | Estimated Net Savings | | | | | | |
| | \$ (724.8) | \$ 157.4 | \$ 467.0 | \$ 1,071.7 | \$ 1,202.8 | \$ 2,174.1 | \$ 434.8 |
| 4 | Gross Savings Returned to Customers | | | | | | |
| | \$ 1,030.220 | \$ 1,030.220 | \$ 1,030.220 | \$ 1,030.220 | \$ 1,030.220 | \$ 5,151.100 | |
| 5 | Amortization of Costs Collected from Customers | | | | | | |
| | \$ (847.600) | \$ (847.600) | \$ (847.600) | \$ (847.600) | \$ (847.600) | \$ (4,238.000) | |
| 6 | Net Savings to Customers | | | | | | |
| | \$ 182.620 | \$ 182.620 | \$ 182.620 | \$ 182.620 | \$ 182.620 | \$ 913.100 | |

Sharing of Merger Savings
(\$ 000's)
(Electric)

| Line No. | | Year 1 (A) | Year 2 (B) | Year 3 (C) | Year 4 (D) | Year 5 (E) | Five Year Total (F) | Annual Avg. (G) |
|----------|--|-------------------------|-----------------------|-----------------------|-----------------------|-----------------------|---------------------------|-----------------------|
| 1 | Estimated Savings | \$ 3,480.8 | \$ 5,116.6 | \$ 5,952.9 | \$ 6,603.3 | \$ 7,238.8 | \$ 28,392.4 | \$ 5,678.5 |
| 2 | Estimated Costs | \$ 5,724.2 | \$ 284.4 | \$ 484.5 | \$ 48.3 | \$ 948.7 | \$ 12,390.1 | \$ 2,478.0 |
| 3 | Estimated Net Savings | \$ (2,243.4) | \$ 1,832.2 | \$ 4,468.4 | \$ 5,655.0 | \$ 6,290.1 | \$ 16,002.3 | \$ 3,200.5 |
| 4 | Gross Savings Returned to Customers | \$ 3,822.2 | \$ 822.2 | \$ 822.2 | \$ 3,822.2 | \$ 3,822.2 | \$ 19,111.0 | |
| 5 | Amortization of Costs Collected from Customers | \$ (2,478.0) | \$ (2,478.0) | \$ (2,478.0) | \$ (2,478.0) | \$ (2,478.0) | \$ (12,390.0) | |
| 6 | Net Savings to Customers | \$ 1,344.2 | \$ 344.2 | \$ 1,344.2 | \$ 1,344.2 | \$ 1,344.2 | \$ 6,721.0 | |

ATTACHMENT 2
MERGER COMMITMENTS

1. Applicants commit to make available to the Kentucky Public Service Commission ("Commission"), for inspection and examination at such time and place as the Commission designates, the books and records of ULH&P and the books and records of any subsidiary of the new Duke Energy Corporation ("New Duke Energy") in which New Duke Energy holds a controlling interest, to the extent necessary to verify transactions with ULH&P. Applicants commit that ULH&P's, CG&E's, and Cinergy's books and records will be located in either in Cincinnati, Ohio, Plainfield, Indiana or Charlotte, North Carolina.

2. Applicants commit that ULH&P shall not incur any additional indebtedness, issue any additional securities, or pledge any assets to finance any part of Duke Energy Corporation's ("Duke Energy") acquisition of Cinergy Corp.'s ("Cinergy") stock. ULH&P will loan and borrow money from affiliates only under the terms of the Duke Energy Regulated Money Pool Agreement ("Regulated MPA") and only with the parties to the agreement. Although Cinergy and New Duke Energy will be parties to the Regulated MPA, ULH&P will not make money pool loans or otherwise make loans to Cinergy or New Duke Energy or any affiliate that is not a party to the Regulated MPA.

3. The payment for Cinergy's stock shall be recorded on New Duke Energy's books, and shall be excluded from the books of ULH&P for retail ratemaking purposes and for accounting purposes, unless inconsistent with Securities and Exchange Commission ("SEC") principles.

4. Any acquisition premium paid by Duke Energy for the Cinergy stock shall not be "pushed down" to ULH&P for retail ratemaking purposes, and for accounting purposes, unless inconsistent with SEC principles.

5. No change in control payments will be allocated to the retail customers of ULH&P for retail ratemaking purposes and for accounting purposes, unless inconsistent with SEC principles.

6. ULH&P commits to make an annual filing with the Commission that sets forth ULH&P's CATDI, SAIDI and SAIFI data for the previous year to enable the Commission to monitor ULH&P's commitment that reliability and service quality will not materially degrade as a result of the merger. ULH&P commits to report this data with and without the impact of major storms, or other major impacts, and to meet with the Commission upon request to review the data in such reports.

7. Following the merger, executive level personnel will continue to be based in the Cincinnati/Northern Kentucky area with direct responsibility for gas and electric operations matters in Kentucky. ULH&P will file annual reports on the number of

sustained outages (defined as having a duration of greater than five minutes) and the outage duration for the circuits at each substation. When Duke Energy's CEO has annual meetings with the Commission, gas and electric operations personnel will also be present to discuss service reliability issues.

8. Applicants commit that they will not achieve merger savings at the expense of material degradation in the adequacy and reliability of ULH&P's retail gas and electric service.

9. Applicants commit that ULH&P shall continue to maintain a substantial level of involvement in community activities, through annual charitable and other contributions.

10. Applicants commit to maintaining ULH&P's pro-active stance on developing economic opportunities in Kentucky and supporting economic development activities throughout ULH&P's service territory.

11. Applicants commit that the accounting and reporting system used by ULH&P will be adequate to provide assurance that directly assignable utility and non-utility costs are accounted for properly and that reports on the utility and non-utility operations are accurately presented.

12. Applicants commit to implement and maintain cost allocation procedures that will accomplish the objective of preventing cross-subsidization, and be prepared to fully disclose all allocated costs, the portion allocated to ULH&P, complete details of the allocation methods, and justification for the amount and the method. Applicants commit to give the Commission 30 days' advance notice of any changes in cost allocation methods set forth in the Service Company Utility Service Agreement, the Operating Company / NonUtility Companies Services Agreements and the Operating Companies Service Agreement approved as part of the Duke / Cinergy merger proceeding. Applicants commit to periodic comprehensive third-party independent audits of the affiliate transactions under the affiliate agreements approved in the Duke / Cinergy merger proceeding. Such audits will be conducted no less often than every two years, and reports will be filed with the Commission and the Attorney General. ULH&P shall file the audit report, if possible, when ULH&P files its annual report. Applicants may request a change to the frequency of the audit reports in future years, subject to agreement by the Commission and the Attorney General.

13. ULH&P commits to protect against cross-subsidization in transactions with affiliates.

14. ULH&P acknowledges that, for rate-making purposes, the Commission has jurisdiction over ULH&P's capital structure, financing, and cost of capital, and that the Commission will continue to exercise such jurisdiction.

15. Applicants commit that the merger will have no adverse impact on the base

rates or the operation of the fuel adjustment clause, gas supply clause, and demand side management clause of ULH&P.

16. In future rate cases ULH&P shall not seek a higher rate of return on equity than would have been sought if the merger had not occurred.

17. The accounting and rate-making treatments of ULH&P's excess deferred income taxes will not be affected by the merger of Cinergy and Duke Energy.

18. Cinergy and Duke Energy commit to take an active and ongoing role in managing and operating ULH&P in the interests of customers, employees, and the Commonwealth of Kentucky, and to take the lead in enhancing ULH&P's relationship with the Commission, with state and local governments, and with other community interests, including, but not limited to, meetings between Duke Energy's chief executive officer and the Commission at least once a year or more frequently if deemed necessary by the Commission.

19. Applicants commit that, for a period of five years following the merger, ULH&P will advise the Commission at least annually on the adoption and implementation of best practices at ULH&P following the completion of the merger between Cinergy and Duke Energy.

20. Applicants commit to provide notification to the Commission as soon as practicable of registration or issuance of new public long-term debt or equity in excess of \$500 million issued by Duke Energy or Cinergy.

21. Duke Energy commits to notify the Commission subsequent to its board approval and as soon as practicable following any public announcement of any acquisition of a regulated or non-regulated business representing 5 percent or more of Duke Energy's market capitalization.

22. Applicants commit that ULH&P will pay dividends only out of retained earnings. Applicants further commit to maintain a capital structure for ULH&P which contains a minimum of thirty-five percent equity.

23. Applicants commit that when ULH&P files its quarterly reports with the Commission, it shall include with that filing a schedule of the current capital structure and a schedule of any capital contribution made to ULH&P in the applicable quarter.

24. Applicants commit that customers will experience no adverse change in utility service due to the creation of Duke Energy Shared Services, LLC.

25. Applicants commit to: (a) adequately fund and maintain ULH&P's transmission and distribution system; (b) comply with all Commission regulations and statutes; and (c) supply ULH&P's customers' service needs.

26. When implementing best practices, Applicants commit to taking into full consideration the related impacts on the levels of customer service and customer satisfaction, including any negative impacts resulting from workforce reductions.

27. Applicants commit to minimize, to the extent possible, any negative impacts on levels of customer service and customer satisfaction resulting from workforce reductions.

28. ULH&P commits to notify the Commission in writing 30 days prior to any material changes in its participation in funding for research and development. Material changes include, but are not limited to, any change in funding equal to or greater than 25% ULH&P's previous year's budget for research and development. The written notification will include an explanation and the reasons for the change in policy.

29. Applicants commit that ULH&P's local customer service office will not be closed as a result of the proposed merger and that, if and when local customer service offices may be closed to achieve best practices, the Applicants will take into account the impact of the closures on customer service.

30. Applicants commit to dedicating ULH&P's existing and future rate-based generation facilities to the first call requirements of its existing and future native load customers.

31. Applicants commit that within 60 days of the closing of any utility merger, disposition or acquisition in the United States that is exempted under KRS 278.020(5) and 278.020(6), ULH&P will file with the Commission a notice setting forth an analysis of any changes and implications for ULH&P's customers.

32. Applicants commit that CG&E will hold 100 percent of the common stock of ULH&P and that CG&E will not transfer any of that stock without prior notice to the Commission, even if the transfer is exempted under KRS 278.020(5) and 278.020(6).

33. Applicants commit that when budgets, investments, dividend policies, projects, and business plans are being considered by Duke Energy for the Kentucky business, at a minimum, the CEO of ULH&P or its designee must participate on a real-time basis to offer a Kentucky perspective to the decision and be permitted to participate in any debates on the issues on a real-time basis.

34. Applicants commit that ULH&P's President will reside within Kentucky or the Cincinnati metropolitan area.

35. Applicants commit that management talent will not be diverted from ULH&P to Duke Energy or any of its affiliates in a manner which threatens the continued efficient operation of ULH&P.

36. Applicants commit that ULH&P and Duke Energy will file copies of the

Form U5S and Form U-13-60 with the Commission. If after the finalization of the reporting requirements in RM05-32-000 (Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Energy Policy Act of 2005 - Notice of Proposed Rulemaking), the FERC does not require the aforementioned reports to be filed, then ULH&P will meet with the Commission to discuss and reach agreement on alternative reporting to meet the Commission's reasonable data needs. Applicants also commit that New Duke Energy, Cinergy and CG&E will file copies of their annual reports with the Commission.

37. ULH&P is committed to providing a variety of customer programs and services that enable its customers to better manage their energy bills based on the varied needs of its customers. ULH&P will continue to offer a variety of service options that provide accessibility and convenience, as well as consistent customer service experience, regardless of the service channel.

38. ULH&P will continue to have qualified and skilled customer service representatives available 24 hours a day, to respond to power outage calls. Customers will also have access to ULH&P's online services and automated telephone service, 24 hours a day, to perform routine interactions or to obtain general billing and customer information.

39. ULH&P will continue to staff qualified and skilled customer service representatives during core business hours to handle all types of customer inquiries, and will continue its commitment to a Quality Assurance process.

40. ULH&P will continue to survey its customers regarding their satisfaction and will integrate this information into its processes, programs, and services that impact its customers.

41. Before ULH&P can issue long-term debt, it must receive approval of the Commission.

42. ULH&P Will not guarantee the credit of any of its affiliates unless specifically approved by the Commission.

43. All debt at the New Duke Energy and Cinergy levels will be non-recourse to ULH&P.

44. Applicants commit that in the event the merger between Cinergy and Duke Energy is not consummated and Cinergy either makes a termination payment to Duke Energy or receives a termination payment from Duke Energy pursuant to The Agreement and Plan of Merger, then neither the cost of the termination payment nor the receipt of a termination payment would be allocated to ULH&P's books. Additionally, if the merger is not consummated, ULH&P's customers will not bear any costs of the failed transaction.

45. Applicants agree that the Commission's approval of "at-cost" pricing for the Utility Service Agreement, Services Agreements and Operating Companies Service Agreement does not preclude the Commission from asserting any pricing methodology at the FERC, if applicable, after the finalization of the reporting requirements in RM05-32-000 (Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Energy Policy Act of 2005 - Notice of Proposed Rulemaking).

46. Following the merger, the size of the resulting New Duke Energy will present the opportunity to consider whether separating the electric and gas pipeline businesses creates value. No determination has been made. The plans under consideration involve Duke Energy's interstate gas pipeline business, not CG&E's and ULH&P's retail gas businesses.